

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION**

Call to Order: By **CHAIRMAN MACK COLE**, on January 12, 1999 at 10:00 A.M., in Room 331 Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Don Hargrove, Vice Chairman (R)
Sen. Jon Tester (D)
Sen. Bill Wilson (D)

Members Excused: Sen. Jack Wells (R)

Members Absent: None.

Staff Present: David Niss, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 39, SB 43
Executive Action: SB 148

HEARING ON SB 39, SB 43

Sponsor: SEN. MIKE TAYLOR, SD 37

Proponents: None

Opponents: None

Opening Statement by Sponsor:

SEN. TAYLOR explained that SB 39 extends legislative term limits from 8 to 12 years, and noted that this measure would have to be voted on by the people. He pointed out that the extended term limits would not take effect until 2003.

SEN. TAYLOR distributed copies of a breakdown of current term limits **EXHIBIT(sts08a01)**. He indicated that he would propose an amendment to SB 43 to change the effective date from 2001 to 2003. SB 43, which would have to be voted on by the people, will change term limits for the House of Representatives from 2 to 4 years, and the Senate from 4 to 6 years. Representatives who are elected to represent an even-numbered house district in the 2000 general election would serve a two-year term, but subsequent terms would be 4-year terms. He explained that a coin toss determined that it would be representatives of even-numbered districts who would serve the two-year term.

He pointed out that it takes time for legislators to learn and understand specifically the budget issues assigned to the Finance and Claims Committee, as well as taxation issues and, unless they can make informed decisions regarding these issues, the lobbyists and the agencies who are going to be here and have institutional memory will have the clout. He added that, as a body, they need leaders to direct them or they will not get anything done. **SEN. TAYLOR** reported that, last session, the agencies spent over \$200,000 on lobbyists to influence legislators' decisions, and will spend more this session.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 16}

Questions from Committee Members and Responses - SB 39:

SEN. HARGROVE asked **SEN. TAYLOR** why there is a difference between the proposed term limits for the Executive and Legislative branches.

SEN. TAYLOR indicated SB 39 would not affect term limits for the Executive branch.

SEN. HARGROVE pointed out that the text of the proposed bill reads "more than 8 years", and indicated they might ask **Joe Kerwin, Deputy Secretary of State for Elections**, to clarify that portion of the proposed bill. **SEN. HARGROVE** then asked what are "unenforceable federal term limits" referred to in the title.

SEN. TAYLOR responded that the Supreme Court struck down term limits for federal legislators, and term limits are therefore unenforceable in the federal government due to this decision.

SEN. HARGROVE asked if **SEN. TAYLOR** has reason to believe that the people of Montana have changed their minds regarding term limits.

SEN. TAYLOR indicated that he thinks the people still favor term limits but that, regarding term limits in Montana, because they only serve every other year, it becomes a different question and he believes the people would support this increase in term limits. He added that he is also in favor of term limits, but

that 90 days every other year is not a long time for legislators to meet.

SEN. HARGROVE asked how many people currently serving in the Montana Senate have been in longer than 8 years. **SEN. TAYLOR** responded that he did not know how many, but it is his understanding that over a third of the 150 legislators will be gone as a result of current term limits.

SEN. WILSON asked if **SEN. TAYLOR** believes an extra 2 sessions will make that much difference. **SEN. TAYLOR** responded that 12 years seems to be the benchmark, and he believes the 2 extra sessions will allow legislators to have more time in which to be effective.

{Tape : 1; Side : A; Approx. Time Counter : 16 - 23}

SEN. WILSON asked **Joe Kerwin, Deputy Secretary of State for Elections**, if he sees anything in the wording of these bills that causes him any concern or that he has any questions about. **Mr. Kerwin** responded that they do have one concern regarding SB 43, which he will address later in the hearing. He indicated that the wording in SB 39, which **SEN. HARGROVE** was concerned about, was changed from "8 or more years" to "more than 8 years" because, in the bill, there is a change in how the terms are calculated. He explained that, currently, they calculate by determining if, at the end of a current term, a person would have served 8 or more years, which could prevent someone from serving even 8 years. The bill will change that calculation so that they look to the future term, that it basically affects people who may be appointed to serve a partial term and prevents them from serving more than those 8 years.

SEN. TESTER indicated that the Executive branch and the Legislative branch are not equal, and it appears there is some discrimination against the Executive branch. He asked **SEN. TAYLOR** if, from a legal standpoint, this will hold up even though everyone is not treated equal. **SEN. TAYLOR** responded that he considered that issue, but that he did not want to tackle that at this point because he felt legislators were the key. The Governor works 365 days a year, as does the Secretary of State and others in the Executive branch, and this is similar to the federal guidelines for 8 year term limits before they were struck down. This bill will extend term limits for the Legislative branch because of the short length of time legislators are in session. **SEN. TESTER** asked if there was any legal counsel to that fact. **SEN. TAYLOR** replied no, other than talking to their legal counsel that they all use and without taking it to the

courts, noting that anything can be challenged. He added that he does not have a hard opinion from a law firm.

CHAIRMAN COLE referred to the last page of SB 39, and asked **SEN. TAYLOR** if he would want to include the proposed number of years for the term limits in the text of the ballot. **SEN. TAYLOR** responded he is not opposed to that, and it may be a good point. He added that he prefers they have as much information as possible without overload. **CHAIRMAN COLE** noted that there should be informational packets.

{Tape : 1; Side : A; Approx. Time Counter : 23 - 30}

Questions from Committee Members and Responses - SB 43:

SEN. HARGROVE noted that Montana is not exactly a reflection of the federal government, but that 2 year limits for the House of Representatives is a projection from history and the way our federal government was formed. He asked **SEN. TAYLOR** if he has philosophically looked at the structure of our country as it was formed, the reasons for it and the balance between the Senate and the House, and asked him to comment on that and why Montana would be different. **SEN. TAYLOR** responded that he has spent a lot of time on the Constitution, and the three equal powers of government, and that he will expound on that in the debate on term limits for judges. He stated that he understands why the Constitution was set up for 2 and 6 years for the Senate and the House. He indicated that, as the country evolves, the people by their desires and votes can change the Constitution to fit the needs of today without destroying the intent of the Founding Fathers, which is very important to him. Montana is unique, and the reason for the 4 year change is that they meet every other year. Montana's Representatives are running for office at the same time they are in legislative session and, in addition, the costs are increasing. Montana's citizen legislature is probably one of the cheapest legislatures in America, considering the talent of those serving in Montana, but the costs of election are getting higher and higher, and some good people who might otherwise run are being eliminated because they have to run for office so frequently. House members elected for 4 years will only serve 180 days, or 6 months in 4 years, as those in the Senate currently do.

SEN. TESTER indicated that his concern with increasing the term from 4 to 6 years is accountability to the electorate. He asked if **SEN. TAYLOR** has thought about the accountability issue, and if he thinks it will enhance a representative government. **SEN. TAYLOR** responded that, because they only meet every other year, the people will still have a representative government. He

pointed out that, of those members of the House and Senate who run every 2 years, the greater majority are re-elected, noting that, if there were a large turn-over, this would be a valid point, but that it has not been that way. It is a matter of economics and also a matter of still representing the people, but also of being effective.

SEN. WILSON asked if there would be a conflict with current law if the changes proposed in SB 43 passed and those proposed in SB 39 did not. **SEN. TAYLOR** stated it is his understanding that the changes proposed in SB 39 would have to pass before the changes in SB 43 could pass.

{Tape : 1; Side : A; Approx. Time Counter : 30 - 40; Comments : End of Tape 1, Side A}

SEN. WILSON asked **Mr. Kerwin** if he sees a possible conflict, or if he would explain how these fit together. **Mr. Kerwin** responded that, if SB 39 was not passed and SB 43 was passed, and House members had 4 year terms and Senators had 6 year terms, effectively, a Representative would be able to serve 2 terms but would not be allowed to file for a third term because they would have served 8 or more years. At the end of a 6 year term, a Senator would be able to file for another term because he or she would not have served 8 or more years at that time, and would then be able to serve a second term, for a total of 12 years of service, assuming they had not been appointed or served a short term, or had not served prior terms.

SEN. WILSON said what if they do away with the whole thing, go back down the other road and avoid all these problems, and asked **SEN. TAYLOR** if he would have a problem with that, or if he has re-thought it in the course of this hearing. **SEN. TAYLOR** responded no, he has not re-thought it. He then addressed **David Niss**, and indicated he would like to have a ruling from him or from **Greg Petesch, Legislative Services Division**. He indicated the intent was three 4-year terms for the house and two 6-year terms for the Senate.

CHAIRMAN COLE indicated they would reserve that determination until the Committee considered executive action on the bills, to give **Mr. Niss** time to review the bill. **Mr. Niss** indicated that, if SB 39 does not pass, the current term limits will remain in effect, but the length of a Senate term would be 6 years.

CHAIRMAN COLE reported that North Dakota recently went to 4 years, and their legislators feel it has improved the quality of legislators, and they had more people running. He asked if **SEN. TAYLOR** had a list of other states that have gone to 4 years.

SEN. TAYLOR responded that he does not have a list, that he knows 2 or 3 others states have gone to 4 years and 18-20 other states are considering it. He offered to provide that information for the Committee. **CHAIRMAN COLE** asked **SEN. TAYLOR** to provide that and any other information he might have before the Committee takes executive action.

SEN. TAYLOR indicated he would like to ask for an amendment on SB 43 to make the dates correct, and that he would like to propose an amendment to address the concerns brought up by the Committee. **CHAIRMAN COLE** noted that the Committee would probably take executive action on Thursday, if they have time.

{Tape : 1; Side : A; Approx. Time Counter : 40 - 46}

Closing by Sponsor:

SEN. TAYLOR thanked the Committee for a good hearing and the good questions. He added that he does not take this issue lightly, that whenever you deal with the Constitution, which is the best mechanism any government has, you can't take it lightly. He stated that term limits were not proposed by the Constitution, they were proposed by the people themselves a few years ago and, although you can make the argument that our founding fathers said people with power for a long term can be a problem, he does not believe that is the intent of this bill, that it does not increase the terms to the point they would be a concern. He pointed out that most of the major newspapers favored this bill in form, not knowing the contents, with the exception of one that wanted to abolish term limits. He indicated that he believes the people who elect them expect them to be able to keep up with the memory of the lobbyists, to understand the agencies' requests, and make competent decisions, and that they believe their legislators know all the issues have become experts. The extra 2 sessions proposed in SB 39 will allow legislators to work for the voters and represent their districts.

{Tape : 1; Side : A; Approx. Time Counter : 46 - 52}

EXECUTIVE ACTION ON SB 148

CHAIRMAN COLE indicated there was some concern regarding notice to property owners when the department intends to sell property, and that **Mr. Niss** had been asked to prepare some amendments.

EXHIBIT (sts08a02) **Mr. Niss** indicated that the first 3 paragraphs are title amendments which he will discuss later, and the 4th is a technical amendment required to divide a section that is being amended into 2 subsections. He then stated that paragraph 5 of the amendment spells out "the owner of the property" which means

the owner of the property at the time that the statute is applied, or in other words when the department intends to sell or exchange a piece of land. He further explained that paragraph 6 strikes the citation to the 2 subsections of section 77-2-322, which will mean the bill will refer to the entire section 77-2-322, including subsection 3 which requires that the terms of the sale also be advertised in the newspaper.

CHAIRMAN COLE asked if adjacent owners would have 10 days to give notice whether they want to sell. **Mr. Niss** indicated that is correct, adding that paragraph 5 of the Amendment re-inserts the stricken language, but that now it applies only to the current owner, and not the original owner and successors in interest, which is what the department was interested in eliminating because it is a lengthy and difficult job to locate the previous successors in interest.

Motion: **SEN. HARGROVE** moved that the **ADMENDMENT TO SB 148 BE ADOPTED.**

{Tape : 1; Side : A; Approx. Time Counter : 52 - 57}

SEN. TESTER pointed out that the original language says "the owner from whom the interest was originally acquired", and this amendment does not talk about that, it just says "the owner of the property", and asked if that automatically assumes it is the person it was originally acquired from. **Mr. Niss** responded that they are referring to an adjacent owner and, if there are 2 or 3 adjacent owners, they would all be notified, and this is referring only to the current owner at the time an exchange is proposed by the department, not the person the land was originally taken from.

Vote: Motion to **ADOPT THE AMENDMENT TO SB 148** carried unanimously.

SEN. HARGROVE indicated that he is uncomfortable with the section of the bill regarding auctions and asked **Mr. Niss**, if the auction part was amended out, would there still be a viable bill. **Mr. Niss** responded yes.

Motion: **SEN. HARGROVE** moved to **DELETE THE NEW PART OF SUBSECTION 2 OF SECTION 2, PAGE 2, LINES 7-9.**

Mr. Niss pointed out they would also have to delete the exception in line 4, take out the changes in lines 2 and 3, and the only thing left would be the increase to \$5,000 in line 5. **SEN. HARGROVE** said that it sounds like a love-fest between members of the Executive branch, that the public is cut out of it and he

thinks the public should be offered the opportunity to bid on it at auction, so he would request this amendment. **Mr. Niss** asked if the change on page 2 line 5 should then be left in. **SEN. HARGROVE** said that would be okay.

Vote: To AMEND SB 148 TO ELIMINATE THE REFERENCES TO AUCTION IN SB 148. Motion carried unanimously.

SEN. TESTER indicated he did not think the amendment would eliminate the possibility of exchanging land without putting it up for sale or auction.

Motion/Vote: **SEN. WILSON** moved that SB 148 DO PASS AS AMENDED. Motion carried unanimously.

{Tape : 1; Side : A; Approx. Time Counter : 57 - 67}

CHAIRMAN COLE announced that the Committee will hear SB 11 on Thursday and that, if there is enough time following that hearing, the Committee will consider executive action on SB 39, SB 41, SB 42 and SB 43.

Mr. Niss reported that Thursday is request deadline for all general bills. He noted that the Lt. Governor's office indicated they already have 36 pages of gubernatorial appointments. **SEN. HARGROVE** asked if there is not a better way to handle these gubernatorial appointments, and indicated that the Committee members might think about this as they go through the session.

There was general discussion among the Committee members regarding the gubernatorial appointment confirmation process.

{Tape : 1; Side : A; Approx. Time Counter : 67 - 71; Comments : End of Tape 1, Side B}

CHAIRMAN COLE asked if the Committee members would like to contribute to a refreshment fund. **Mary Morris** collected \$5.00 each from **SEN. HARGROVE**, **SEN. TESTER**, **CHAIRMAN COLE** and **Mr. Niss**.

ADJOURNMENT

Adjournment: 11:15 A.M.

SEN. MACK COLE, Chairman

MARY MORRIS, Secretary

MC/MM

EXHIBIT (sts08aad)